



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL
LITIGATION BUREAU

March 24, 2023

By ECF

Honorable Carol Bagley Amon
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

**Re: *Smigiel v. College of Staten Island*, 21-cv-06323 (CBA)(RML)
Plaintiff's Request for Pre-Motion Conference**

Dear Judge Amon:

The Office of the Attorney General represents Defendants in the above captioned proceeding. Defendants write in response to Plaintiff's request for a pre-motion conference on Plaintiff's motion to amend the complaint.

Defendants oppose Plaintiff's request for a pre-motion conference for two reasons. First, Plaintiff's contention that his claims were dismissed without prejudice is incorrect. In its February 21, 2023 Memorandum and Order, the Court dismissed Plaintiff's *state law claims* without prejudice. *See* ECF 25 at 14. The Court however did not specify that any of Plaintiff's other claims were dismissed without prejudice. Therefore, by default, this dismissal operates as an "adjudication on the merits." *See* FRCP 41(b). Moreover, the Clerk of the Court entered judgment on February 22, 2023. *See* ECF 26. Second, Plaintiff's proposed amended complaint fails to rehabilitate any of the deficient claims that the Court dismissed. As such, any amendment would be futile.

Finally, should the Court allow Plaintiff to file his motion to amend the Complaint, the Defendants respectfully request the opportunity to file a full opposition brief.

Thank you for your consideration of this request.

Respectfully submitted,

/s/ Jane P. Rosales

Jane P. Rosales

Assistant Attorney General

cc: Counsel of record (via ECF)